

Exhibit A

Joseph Amaru

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SCHERING-PLOUGH :
CORPORATION/ENHANCE : CIVIL ACTION NO.
SECURITIES LITIGATION : 08-397 (DMC) (JAD)

IN RE: MERCK & CO., INC. :
VYTORIN/ZERIA SECURITIES : CIVIL ACTION NO.
LITIGATION : 08-2177 (DMC) (JAD)

IN RE: SCHERING-PLOUGH :
CORP. ENHANCE ERISA : CIVIL ACTION NO.
LITIGATION : 08-1432 (DMC) (JAD)

VIDEOTAPED DEPOSITION OF

JOSEPH AMARU

JUNE 1, 2011

Joseph Amaru

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<p>1 Videotape deposition of</p> <p>2 JOSEPH AMARU, taken pursuant to notice, was</p> <p>3 held at the offices of CompHealth Associates,</p> <p>4 Inc., 10 Norden Place, Suite 200, Norwalk,</p> <p>5 Connecticut 06855, beginning at 10:30 a.m.,</p> <p>6 on the above date, before Amanda Dee</p> <p>7 Maslinsky-Miller, a Certified Realtime</p> <p>8 Reporter.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 GOLKOW TECHNOLOGIES, INC.</p> <p>18 877.370.3377 ph 917.591.5672 fax</p> <p>19 deps@golkow.com</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 APPEARANCES (continued)</p> <p>2</p> <p>3 FOR THE DEFENDANT MERCK/SCHERING-PLOUGH:</p> <p>4</p> <p>5 VIA TELEPHONE:</p> <p>6 MONICA PERRETTE, ESQUIRE</p> <p>7 LOWENSTEIN SANDLER, PC</p> <p>8 65 Livingston Avenue</p> <p>9 Roseland, New Jersey 07068</p> <p>10 (973) 597-2500</p> <p>11 Mperrette@lowenstein.com</p> <p>12</p> <p>13 FOR THE UNDERWRITER DEFENDANTS:</p> <p>14</p> <p>15 JEFFREY J. GREENBAUM, ESQUIRE</p> <p>16 SILLS, CUMMIS & GROSS, P.C.</p> <p>17 The Legal Center</p> <p>18 One Riverfront Plaza</p> <p>19 Newark, New Jersey 07102</p> <p>20 (973) 643-7000</p> <p>21 Jgreenbaum@sillscummis.com</p> <p>22</p> <p>23 ALSO PRESENT: Robert Sweig, Videographer</p> <p>24</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 FOR THE SECURITIES PLAINTIFFS:</p> <p>4</p> <p>5 JEFF A. ALMEIDA, ESQUIRE</p> <p>6 GRANT & EISENHOFER, PA</p> <p>7 1201 North Market Street</p> <p>8 Wilmington, Delaware 19801</p> <p>9 (302) 622-7000</p> <p>10 Jalmeida@gelaw.com</p> <p>11</p> <p>12</p> <p>13 FOR THE DEFENDANT MERCK/SCHERING-PLOUGH:</p> <p>14 ANDREW G. GORDON, ESQUIRE</p> <p>15 DANIEL J. JUCEAM, ESQUIRE</p> <p>16 PAUL, WEISS, RIFKIND, WHARTON</p> <p>17 & GARRISON, LLP</p> <p>18 1285 Avenue of the Americas</p> <p>19 New York, New York 10019</p> <p>20 (212) 373-3697</p> <p>21 agordon@paulweiss.com</p> <p>22 djuceam@paulweiss.com</p> <p>23 - and -</p> <p>24</p> <p>1 VIA TELEPHONE:</p> <p>2 JULIA A. DERISH, ESQUIRE</p> <p>3 PAUL, WEISS, RIFKIND, WHARTON</p> <p>4 & GARRISON, LLP</p> <p>5 1285 Avenue of the Americas</p> <p>6 New York, New York 10019</p> <p>7 (212) 373-3697</p> <p>8 jderish@paulweiss.com</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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Golkow Technologies, Inc. - 1.877.370.DEPS

Joseph Amaru

Page 10	Page 12
<p>1 - - -</p> <p>2 EXAMINATION</p> <p>3 - - -</p> <p>4 BY MR. GORDON:</p> <p>5 Q. Good morning, sir. Could</p> <p>6 you state your name and address for the</p> <p>7 record, please?</p> <p>8 A. Joseph Amaru. 16</p> <p>9 Whippoorwill Road, Bethel, Connecticut,</p> <p>10 06801.</p> <p>11 Q. Let me just take a second</p> <p>12 and introduce myself. My name, as I</p> <p>13 mentioned, is Andrew Gordon. And I'm</p> <p>14 with Paul Weiss, and we represent Merck</p> <p>15 and Schering-Plough and certain of the</p> <p>16 defendants in this litigation.</p> <p>17 Are you familiar with this</p> <p>18 litigation?</p> <p>19 A. Very vaguely.</p> <p>20 Q. How are you familiar with</p> <p>21 it?</p> <p>22 A. I asked before what this was</p> <p>23 about, and it's a securities case about</p> <p>24 Vytorin. That's all I know.</p>	<p>1 just know it was about Vytorin.</p> <p>2 Q. And do you recall any of the</p> <p>3 answers that you gave or what you told</p> <p>4 him generally?</p> <p>5 A. No, I don't recall my</p> <p>6 answers. I know what they would be, that</p> <p>7 I know.</p> <p>8 Q. What do you mean by that?</p> <p>9 A. Well, because the same</p> <p>10 answers I would present to him I'll</p> <p>11 present to you today, because I had very</p> <p>12 defined responsibilities with Merck and</p> <p>13 follow that to the letter.</p> <p>14 Q. So we'll come back to your</p> <p>15 tenure at Merck.</p> <p>16 Did the person who called</p> <p>17 you identify yourself --</p> <p>18 A. There were two phone calls.</p> <p>19 Q. Okay.</p> <p>20 A. Are you talking about the</p> <p>21 first or the second?</p> <p>22 Q. Were they both with the same</p> <p>23 person?</p> <p>24 A. I don't know. I thought</p>
Page 11	Page 13
<p>1 Q. Have you spoken to anybody</p> <p>2 at any point in time about this</p> <p>3 litigation?</p> <p>4 A. Somebody called me</p> <p>5 originally to ask me a few questions and,</p> <p>6 then he called -- somebody else called</p> <p>7 again. And that was it.</p> <p>8 Q. And when you said "somebody"</p> <p>9 called you to ask you a few questions,</p> <p>10 did you get a name of the person who</p> <p>11 called you?</p> <p>12 A. I don't remember his name.</p> <p>13 Q. But it was a gentleman --</p> <p>14 A. He seemed pretty official, I</p> <p>15 don't know who he was. I asked him a lot</p> <p>16 of questions at the time, but this was</p> <p>17 months ago.</p> <p>18 Q. And do you recall any of the</p> <p>19 questions he asked you?</p> <p>20 A. The only thing I can</p> <p>21 remember, he was asking about -- you</p> <p>22 know, I can't be exactly sure. It was</p> <p>23 about Vytorin, and I couldn't give you</p> <p>24 any specifics about the questions. I</p>	<p>1 they were, but I can't -- I'm not sure.</p> <p>2 Q. So let's focus.</p> <p>3 This first call, you don't</p> <p>4 recall when it was, do you?</p> <p>5 A. Just months ago, months and</p> <p>6 months ago. Three months, six months. I</p> <p>7 can't be sure.</p> <p>8 Q. And you spoke generally, you</p> <p>9 answered some questions about Vytorin?</p> <p>10 A. Yes.</p> <p>11 Q. And you don't recall the</p> <p>12 person's name with whom you spoke?</p> <p>13 A. No, I don't.</p> <p>14 Q. And did the person identify</p> <p>15 himself?</p> <p>16 A. He did.</p> <p>17 Q. And did he tell you why he</p> <p>18 was calling?</p> <p>19 A. Yeah. I'm sure I asked a</p> <p>20 lot of questions about that, who I was</p> <p>21 speaking to and what I was getting</p> <p>22 involved with here and all.</p> <p>23 So he did ask me -- he did</p> <p>24 tell me who he was, yes.</p>

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Joseph Amaru

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<p>1 Q. And do you recall -- I know 2 you don't remember the name, but do you 3 recall anything generally about the 4 person you spoke with? 5 A. No. No. The first guy 6 seemed very nice. 7 Q. Did they tell you they were 8 a lawyer, an investigator? 9 A. I don't remember, I'm sorry. 10 Q. No, that's okay. 11 Did they tell you who they 12 were representing or why they were 13 calling? 14 A. You know, I can't be 100 15 percent sure who he represented. 16 Q. What is your -- 17 A. What is my recollection? 18 Q. Your best recollection. 19 A. He just told me there was a 20 case about Zetia and Vytorin and wanted 21 to ask me a few questions. And I said 22 who are you? He identified himself. I 23 felt satisfied that he was legit, and I 24 knew I was going to be honest with my</p>	<p>1 Q. And when you say "divorce" 2 yourself from the proceedings, what do 3 you mean? 4 A. I mean, I felt what you're 5 saying to me now I know is not what I 6 would have said the first phone call. So 7 since you're not being completely honest 8 with what I had thought I had said and my 9 intentions here, I felt, you know, this 10 is -- I really don't want to be involved 11 with this, because you're not -- you're 12 not playing fair here. 13 Q. Okay. So we'll come back to 14 your responsibilities. 15 But other than those two 16 calls, do you recall any other 17 conversations you've had about the 18 litigation? 19 A. Just with Mr. -- 20 Q. Juceam? 21 A. -- Dan here. 22 Q. Setting up this deposition? 23 A. Right. Right. 24 Q. Currently -- let me step</p>
Page 15	Page 17
<p>1 answers, so I didn't have much problems 2 answering his questions. 3 Q. And then there was a second 4 call? 5 A. Yes. 6 Q. And I take it your 7 recollection is no better about that call 8 than the first call? 9 A. Well, the second call, he 10 was reading back to me my answers. And, 11 to my recollection, it wasn't the answers 12 I had originally given. Because I had 13 very defined responsibilities, so I would 14 have a very defined answer to anything 15 that came up with this. 16 And I just felt that what he 17 was saying wasn't what I had said. I 18 don't know how he put it in different 19 context or whatever, but I didn't feel it 20 was right. And I actually tried to 21 divorce myself from the proceeding, 22 saying, listen, that's not what I said. 23 I really don't want to be involved with 24 this.</p>	<p>1 back and get some background, if you 2 don't mind. 3 Let me just say one thing 4 before we begin. I'm going to be asking 5 you a series of questions today. And I 6 only have two basic requests. One is, 7 for the sake of the court reporter, if 8 you let me finish my question before you 9 answer; and you have to answer audibly, 10 shaking the head, nodding doesn't do much 11 for the court reporter. 12 Is that all right? 13 A. Sure. Have I been okay with 14 that so far? 15 Q. You just passed. 16 And then the second thing 17 is, if you don't understand anything I'm 18 asking, just tell me, and I'll try to 19 re-jigger the question and make it more 20 understandable. 21 My wife will tell you that 22 that is not a great skill, but I'll try. 23 A. Right. 24 Q. You currently work where,</p>

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Joseph Amaru

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<p>1 other -- other drugs, it did -- the 2 physicians would do it on their own. And 3 with HIV people were dying, so physicians 4 would try anything to help out. So the 5 physicians would go off label. 6 But we -- Merck was emphatic 7 about staying on label. That -- the 8 physicians had their own studies that 9 they were doing, but we couldn't go 10 there. 11 Q. When you met with doctors 12 and were talking about Zetia and/or 13 Vytorin, would you ever use the phrase 14 lower is better? 15 A. Yes. 16 Q. And what is your 17 understanding of the -- that phrase. 18 A. My understanding of that 19 phrase, if you lower -- they did have 20 studies that if you lowered cholesterol, 21 or LDL, you would lower incidence of, to 22 my recollection, heart attacks and 23 cardiovascular disease and they -- 24 that -- and there was a -- you know, I'm</p>	<p>1 Q. Now, I believe you said 2 doctors -- well, strike that. 3 Did doctors ask questions 4 about Vytorin? 5 A. Sure. 6 Q. Do you recall anything that 7 they asked? 8 A. Well, they would ask about 9 when are you coming out with a -- that 10 was the outcomes trial, an outcomes 11 trial. There were no outcomes. 12 Q. Right. 13 A. So now that I think back, I 14 remember we had surrogate trials. But 15 outcomes is when they could definitively 16 say about it. I believe Zocor did, and I 17 know some other -- Lipitor does, they 18 have a lot of studies. I know Zocor did, 19 but Zetia did not and Vytorin did not. 20 Q. Okay. What did you tell 21 them when they asked about outcomes 22 trial? 23 A. I'd say, I have no outcomes 24 trial, and I could not give them a date</p>
Page 43	Page 45
<p>1 going to say cardiovascular disease. 2 Q. And did you think there was 3 anything untrue about telling physicians 4 that lower was better? 5 A. I attended lots of seminars, 6 independent and from a multitude of 7 sources outside -- you know, just from 8 going to all scientific meetings, 9 speaking with physicians, what was in the 10 literature. Lower was better. 11 But they didn't -- they 12 didn't know how low to go. They felt 13 that there should be some LDL in your 14 system, but they couldn't -- had yet to 15 determine what the magic number was that 16 would be perfect. They would talk about 17 babies were even born with LDL, so they 18 thought that might be a good -- well, 19 something to look at. 20 Q. So I take it there was 21 nothing untrue about saying that there 22 were studies that showed that lower was 23 better? 24 A. Right.</p>	<p>1 when. I might have said they're working 2 on it. But I really could not go beyond 3 that, and that's why I always stayed away 4 from that, so as not to get myself in 5 trouble. 6 Q. Right. And I take it -- 7 A. You know, I don't even think 8 I would say they're working on that, 9 because I would have -- I would have 10 towed the company line, you know, we 11 don't have the studies, they're working 12 on it -- I might have said they're 13 working on some studies, I don't know 14 what they are, I don't have any 15 information on it so I can't comment on 16 it. I might have gone that far and 17 then -- but that would have been the 18 company line, then. 19 Q. How about any other 20 questions you can recall? 21 A. Oh, questions? 22 Q. About Vytorin. 23 A. I'd tell them how much it 24 lowered -- they would ask about side</p>

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Joseph Amaru

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<p>1 effects, they would ask about mechanism 2 of action, they would ask about dosing, 3 they would ask about drug interactions. 4 Q. And I take it whatever they 5 asked, you'd give truthful responses? 6 A. Right. The idea was to 7 memorize the product information and that 8 was your job. 9 Q. How about ENHANCE, did they 10 ask questions about ENHANCE? 11 A. You know, most of the 12 physicians realized that we were not 13 allowed to talk about an ongoing study 14 before it was published. So most of them 15 would -- would honor that and not go any 16 deeper. 17 Maybe out of the hundreds of 18 physicians I spoke, some would -- might 19 press me on it, and that's one of the 20 reasons why I always -- just personally 21 decided not to learn about it so I could 22 never get myself into trouble. So even 23 when they asked me, when is it coming 24 out, I would have to give my truthful</p>	<p>1 don't think they had names that I can -- 2 I don't think they had names. 3 Q. Okay. But I take -- 4 A. We had tons of studies, 5 though. 6 Q. Right. 7 A. Lots of studies. 8 Q. I take it you had 9 information that would back up -- 10 A. Sure. 11 Q. -- your claim? 12 A. Had to. Had to. 13 Q. Now, I've asked you about 14 this litigation. And I -- first, as a 15 housekeeping matter, I want to mark an 16 exhibit which is the subpoena that was 17 served on you in this litigation. 18 - - - 19 (Whereupon, Exhibit-233, 20 Subpoena of Joseph Amaru, was 21 marked for identification.) 22 - - - 23 MR. GORDON: I'll mark this 24 as Exhibit -- Defendant's Exhibit</p>
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<p>1 answer is, I really don't know. 2 Especially being in 3 pharmaceuticals for so long, because now 4 I had 15 years in the business, things go 5 wrong all along the line. Even when a 6 drug comes out, they take it off the 7 market because they found something. So 8 I -- one of my life's lessons is you 9 don't -- you live in certainties, you 10 don't live in projections. 11 Q. Did you ever tell doctors, 12 in words or substance, that Vytorin was 13 the best cholesterol drug on the market? 14 A. I would think I did. It was 15 the best. 16 Q. I take it you believe that 17 to be a true statement? 18 A. I did believe that to be 19 truthful. It was the best product to 20 lower your LDL. And I had the studies to 21 prove it. 22 Q. Do you recall what studies 23 you had? 24 A. No, I can't remember. I</p>	<p>1 233. 2 BY MR. GORDON: 3 Q. And while you're flipping 4 through, Exhibit 233 is a subpoena to 5 Joseph Amaru that was served in this 6 matter. 7 Do you recognize this 8 document? 9 A. I recognize Page 1; Page 2 10 looks pretty familiar; Page 3 looks 11 familiar; Page 4 definitely looks 12 familiar; Page 5 looks familiar; 6 kind 13 of. 14 I'm sure I read through 15 this. But this last page does not look 16 familiar to me. 17 Q. Right. These last two 18 pages -- 19 A. I got that right. 20 Q. -- would have been the -- 21 just indicating that you were served. 22 A. Who is Eric Bruen? 23 Q. He's the person who served 24 you with the subpoena.</p>

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Joseph Amaru

Page 54	Page 56
<p>1 Q. And I take it you have no 2 information, one way or the other, about 3 the claims as to whether or not Merck was 4 forthcoming with information in a timely 5 fashion? 6 A. I would not have the 7 information, because it was always -- 8 because Merck was pretty, really -- the 9 information they gave me, they would not 10 release any information to me until the 11 study was done. 12 So I don't know how many 13 people were in it, I don't know who the 14 lead investigator was, I don't know where 15 the trial was being conducted. I 16 couldn't tell you the parameters of the 17 study. I couldn't tell you if it was 18 surrogate or outcomes. 19 Q. And I take it you couldn't 20 tell us anything about when people 21 learned the results or whether they 22 released the results in a timely and 23 forthcoming matter? 24 A. I could not tell you</p>	<p>1 you? 2 A. I can't tell you, I don't 3 know. 4 Q. I'm just going to try some 5 names. 6 Dan Berger? 7 A. You know, I'm in the names 8 business, I come across so many names. 9 And I'm having trouble keeping -- 10 Q. It's not going to -- 11 A. -- the names straight. 12 Q. -- help if I give you a 13 list? 14 A. You know, I couldn't -- you 15 can try some names, but I don't think 16 it's going to work. 17 Q. Okay. Did the -- did the 18 person, at the very least, say to you 19 that they were going to -- that they were 20 calling you on behalf of the plaintiffs 21 in the litigation? 22 A. You know, I really can't -- 23 I really don't remember. I kind of think 24 that it was for the plaintiff, yeah.</p>
Page 55	Page 57
<p>1 anything about that. I was gone by the 2 time -- when the study came out. When I 3 was there, there was just -- the ENHANCE 4 study was coming. And that was the only 5 information they gave. The information 6 was, the ENHANCE study is coming, we'll 7 give you information when we can, we 8 can't right now, therefore, do not 9 discuss it. It's not an approved piece 10 of information. 11 Q. Give me one second. We 12 don't have to go off. 13 --- 14 (Whereupon, a discussion off 15 the record occurred.) 16 --- 17 BY MR. GORDON: 18 Q. Now, you told us about a 19 conversation -- or two conversations you 20 had earlier about -- 21 A. Yes. 22 Q. -- this litigation. 23 Do you recall whether or not 24 Mr. Almeida was the person who called</p>	<p>1 Q. Did they tell you what the 2 purpose of the call was? 3 A. I don't remember. 4 Q. Okay. Were you informed -- 5 A. It was just to get 6 information. 7 Q. Were you informed that that 8 information or that your statements might 9 be used in a public filing with the 10 court? 11 A. Yes, they did. 12 Q. And what did you tell them 13 about that? 14 A. I don't want to get involved 15 in this, something to that effect. 16 Q. Did they ask you for your 17 permission? 18 A. You know, it all started 19 getting very hazy. What my rights were, 20 what my role was going to be in this, 21 what was -- just ask me a question, what 22 was an official question. I don't 23 think -- there was never anything that 24 said, this is off the record, I never</p>

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<p>1 heard that.</p> <p>2 But it was very, as I</p> <p>3 recall, kind of a friendly conversation</p> <p>4 of fact-finding -- fact-finding kind of</p> <p>5 thing. So, I'll -- you know, I'll help</p> <p>6 you find the facts, I have no problem</p> <p>7 with that.</p> <p>8 Then he said would I be -- I</p> <p>9 asked would I be called to court. They</p> <p>10 said, well, we're going to -- well, we</p> <p>11 have this confidential witness and you</p> <p>12 can try -- as I recall, he said you could</p> <p>13 try to be a confidential witness but</p> <p>14 there's no guarantees. I said, all</p> <p>15 right. All right.</p> <p>16 But I -- I think I did say I</p> <p>17 prefer to be confidential and I prefer</p> <p>18 not to -- I really don't have -- didn't</p> <p>19 have a lot of information, since I wasn't</p> <p>20 there when the ENHANCE trial came out and</p> <p>21 just what I told you today.</p> <p>22 Q. Did you tell them that you</p> <p>23 didn't want your statements being used in</p> <p>24 public documents?</p>	<p>1 A. No. I have to be perfectly</p> <p>2 honest.</p> <p>3 Q. You're going to call it like</p> <p>4 you see it?</p> <p>5 A. I have to do it that way,</p> <p>6 otherwise I get myself -- that's the way</p> <p>7 I live, because this way you can't get</p> <p>8 yourself into trouble.</p> <p>9 Q. Did anybody ever send you a</p> <p>10 copy of the Complaint?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 A. I don't think so.</p> <p>14 Q. Let me show it to you.</p> <p>15 A. That's the Complaint?</p> <p>16 Q. Yes.</p> <p>17 A. I never saw that.</p> <p>18 Q. It's been marked as</p> <p>19 Defendants' Exhibit 7.</p> <p>20 And I take it from your</p> <p>21 answer you -- you have never seen this</p> <p>22 before?</p> <p>23 A. No.</p> <p>24 Am I in here?</p>
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<p>1 A. I don't think I would have</p> <p>2 said that.</p> <p>3 Q. They did tell you that you</p> <p>4 were going to be a confidential witness?</p> <p>5 A. Cannot -- I think I</p> <p>6 requested it, but I can't -- I have to</p> <p>7 admit, it was fuzzy; it was fuzzy at the</p> <p>8 time and it's just as fuzzy today.</p> <p>9 Q. How do you feel about the</p> <p>10 plaintiffs using you as a confidential</p> <p>11 witness in this case?</p> <p>12 MR. ALMEIDA: Objection.</p> <p>13 MR. GORDON: You can answer.</p> <p>14 THE WITNESS: I'm happy to</p> <p>15 help out. You know, my -- my</p> <p>16 biggest personal concern is just,</p> <p>17 you know, time is money for me.</p> <p>18 And, yes, I don't mind being, as</p> <p>19 far as -- thinking about it now, I</p> <p>20 don't mind helping out if I can.</p> <p>21 BY MR. GORDON:</p> <p>22 Q. I take it when you say</p> <p>23 "helping out," you're not trying to help</p> <p>24 out one side or the other?</p>	<p>1 Q. I'm going to show you and</p> <p>2 we'll see.</p> <p>3 A. All right.</p> <p>4 Q. So I take it this is the</p> <p>5 first time you're seeing this document?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. Take a look at</p> <p>8 Paragraph 311, which appears on Page 126.</p> <p>9 Are you there on Paragraph</p> <p>10 311?</p> <p>11 A. Up here, yes.</p> <p>12 Q. It says, In addition to its</p> <p>13 false and misleading DTC marketing</p> <p>14 campaign, Merck also targeted doctors and</p> <p>15 other medical professionals with its</p> <p>16 false and misleading marketing message.</p> <p>17 According to Confidential Witness Number</p> <p>18 3, who is a Merck executive specialty</p> <p>19 sales representative, specializing in</p> <p>20 Merck's cardiovascular drug franchise and</p> <p>21 who directly sold Vytorin for several</p> <p>22 years before leaving Merck in mid 2007,</p> <p>23 Merck salespeople were specifically</p> <p>24 trained with scripts to pound home the</p>

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<p>1 lower is better marketing message when 2 providing details to doctors on the 3 benefits of Vytorin. CW3 said that when 4 his/her doctors asked about Vytorin's 5 efficacy, which was often, she/he would 6 assure them that the results of ENHANCE 7 would be available soon and assured them 8 it was the best cholesterol drug on the 9 market. 10 Do you see that? 11 A. Yes, I do. 12 Q. Do those statements look 13 familiar as statements you would have 14 made? 15 A. They're not statements I 16 would have made. 17 Q. Let's take it sentence by 18 sentence. 19 A. Certainly. 20 Q. So the first sentence says, 21 Merck also targeted doctors and other 22 medical professionals with its false and 23 misleading marketing message. 24 A. Wait a second. Where are</p>	<p>1 were told not to discuss our drugs with 2 consumers. 3 But when I started there 4 eight years previously, you were allowed 5 to, and we would talk to patients in the 6 waiting room about it. But then at some 7 point it changed. And so I remember 8 being very strict, you know, patients 9 would ask me about, direct to -- ask me 10 about things, and I can't speak to you, I 11 have to speak to the doctor. And I was 12 very comfortable with that. 13 Q. Now, this paragraph alleges 14 that Merck also targeted doctors and 15 other medical professionals with its 16 false and misleading marketing message. 17 Do you see that? 18 A. I saw that. 19 Q. Okay. Did you ever say to 20 anybody, in words or substance, that you 21 believed that Merck's messaging to 22 doctors and other medical professionals 23 was false or misleading? 24 MR. ALMEIDA: Objection.</p>
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<p>1 you? 2 MR. ALMEIDA: Objection. 3 BY MR. GORDON: 4 Q. The first -- first sentence 5 of Paragraph 311. 6 A. In addition, it starts? 7 Q. In addition to its false and 8 misleading DTC marketing campaign, Merck 9 also targeted doctors and other medical 10 professionals with its false and 11 misleading marketing message. 12 Do you see that? 13 A. I see that. 14 Q. Okay. Let me ask you first, 15 do you know what a DTC marketing campaign 16 is? 17 A. Direct-to-consumer. 18 Q. Okay. Were you involved in 19 any direct-to-consumer marketing 20 campaigns for Vytorin? 21 A. I don't think I would have 22 been, no. No. We would not -- in fact, 23 they had changed the rules over time and 24 when this came -- when -- by this time we</p>	<p>1 THE WITNESS: Answer the 2 question? 3 MR. ALMEIDA: Yes. 4 MR. GORDON: Yes. 5 THE WITNESS: I'm 6 flabbergasted that I would have 7 said anything like that. I would 8 never, ever say that Merck did 9 false, misleading. That's not me, 10 that's not Merck. 11 BY MR. GORDON: 12 Q. I take it you don't believe 13 that it is true that Merck targeted 14 doctors and other medical professionals 15 with false and misleading marketing 16 messages? 17 A. Correct. 18 Q. Then it goes on to say that, 19 According to Confidential Witness Number 20 3, who was a Merck executive specialty 21 sales representative, specializing in 22 Merck's cardiovascular drug franchise, 23 and who directly sold Vytorin for several 24 years before leaving Merck in mid 2007,</p>

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<p>1 Merck salespeople were specifically 2 trained with scripts to pound home the 3 lower is better marketing message when 4 providing details to doctors on the 5 benefits of Vytorin. 6 Okay. So let me first ask, 7 because you have been identified as 8 Confidential Witness Number 3, were you a 9 Merck executive specialty sales 10 representative specializing in Merck's 11 cardiovascular drug franchise? 12 A. Yes. 13 Q. And did you directly sell 14 Vytorin for several years before leaving 15 Merck in mid 2007? 16 A. Yes. 17 Q. And did you say, in words or 18 substance, that Merck salespeople were 19 specifically trained with scripts to 20 pound home the lower is better marketing 21 message when providing details to doctors 22 on the benefits of Vytorin? 23 A. Yes. 24 Q. That is true?</p>	<p>1 A. Because the word efficacy 2 right there -- 3 Q. Yeah. 4 A. Would -- we had efficacy 5 studies. The efficacy was that you 6 lowered LDL 50 percent. That's all I had 7 to do. I did not have to go off script. 8 The script was, lower is better, here is 9 our official marketing piece, here is the 10 prescribing information. There's 11 absolutely no reason to go to ENHANCE. 12 Q. Did you ever assure any 13 doctors that the results of ENHANCE would 14 be available soon? 15 A. You know, I would not -- I 16 could not commit to that, because I 17 didn't know when that study was coming 18 out. And so I would never, ever say that 19 because I would not know when that study 20 was coming out. 21 And I've been in 22 pharmaceuticals and the fact of the 23 business, you never know when it's going 24 to get approved. It may never come out.</p>
Page 67	Page 69
<p>1 A. Uh-huh. 2 Q. Okay. And then it goes on 3 to say, Confidential Witness Number 3 4 said that when his/her doctors asked 5 about Vytorin's efficacy, which was 6 often, he would assure them that the 7 results of ENHANCE would be available 8 soon and assure them it was the best 9 cholesterol drug on the market. 10 Do you see that? 11 A. I see that. 12 Q. Okay. And did doctors that 13 you called upon ask you about Vytorin's 14 efficacy often? 15 A. Yes, they did ask about 16 efficacy. 17 Q. And when they did that, 18 would you assure them that the results of 19 ENHANCE would be available soon? 20 A. Absolutely not. 21 Q. Did you ever say that? 22 A. Absolutely not. And I can 23 tell you why. 24 Q. Tell me why.</p>	<p>1 Q. You had indicated earlier 2 that in the second call they read back 3 some things back to you that were 4 statements you made and you tried to 5 correct it? 6 A. Something like this, and 7 that really got me mad. 8 Q. And when you say "something 9 like this," you mean what's in Paragraph 10 311 and where you pointed out it was not 11 accurate? 12 A. Yes. And I said there was 13 no way I would have ever said false and 14 misleading. I would never have said that 15 about Merck. 16 Q. And I take it that's because 17 you never made any false or misleading 18 statements? 19 A. That's true, too. 20 Q. And Merck, to your 21 knowledge, its salespeople did not make 22 false or misleading statements to the 23 public or medical professionals? 24 A. We were specifically</p>

18 (Pages 66 to 69)

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<p>1 Somebody called you up, I 2 take it out of the blue? 3 A. Out of the blue. 4 Q. Okay. And they -- did they 5 tell you they were looking into the case 6 or anything? 7 A. You know, I have to admit -- 8 Q. Just can't remember? 9 A. -- I'm fuzzy. I said, who 10 are you? What's this about? You know, I 11 asked him a lot of questions. 12 Q. And he asked you questions, 13 you gave some answers? 14 A. Right. 15 Q. And do you recall whether 16 the person said they were a lawyer or an 17 investigator? 18 A. I don't recall. 19 Q. Okay. But they definitely 20 identified themselves? 21 A. Definitely identified 22 themselves. I had a name at the time, I 23 had a company, I had a reason for the 24 call.</p>	<p>1 whether they identified themselves as -- 2 in that call as a lawyer or an 3 investigator? 4 A. I can't recall how he 5 identified himself. 6 Q. And did they tell you what 7 the purpose of that second call was? 8 A. I think he said he wanted to 9 review my statements, for one. 10 Q. And he read you -- 11 A. He read me the statement. 12 Q. -- basically what's in 13 Paragraph 311? 14 A. I don't know if he read me 15 that. But to paraphrase, the sentiment 16 was the same. 17 Q. And you told him, in words 18 or substance, that was not correct? 19 A. Yes, I did. 20 Q. And do you recall what words 21 you used? 22 A. I said, I never said that. 23 Q. Okay. 24 A. I -- this is wrong.</p>
Page 75	Page 77
<p>1 Q. Would you have written that 2 down anywhere or taken any notes or 3 anything like that? 4 A. No. 5 Q. Okay. Any -- 6 A. It was just a friendly 7 fact-finding conversation at the time. 8 Q. Right. 9 A. And he said it might lead, I 10 think, to something else. And I tried to 11 become very -- get as much information as 12 I could, what was I getting involved in 13 here. 14 Q. Right. 15 A. You know, so I tried to find 16 out as much as I could. But I don't -- I 17 can't remember any specifics about that. 18 Q. And then the second call 19 occurred. 20 And do you recall whether or 21 not it was the same person or not? 22 A. You know, I thought it was 23 the same person. 24 Q. Okay. And do you recall</p>	<p>1 Paraphrased, I never said that. 2 Q. And did the person on the 3 other end of the phone call react at all? 4 A. No, he was kind of calm 5 about it. 6 Q. Did they say they would 7 change it or -- 8 A. Never said that. Never 9 asked me if I wanted -- you know, he 10 might have. I don't know if he did or 11 not. But my feeling at that time was, 12 you took what I said and you distorted 13 it, because I never would have said this, 14 so I don't want to speak to you anymore 15 and ended the conversation. 16 Q. And did they react at all to 17 that? They just -- 18 A. No special reaction. 19 Q. Did they give you any 20 assurances they wouldn't use it, given 21 what you told them about its falsity? 22 A. No. 23 Q. Do you remember anything 24 else about that second call?</p>

20 (Pages 74 to 77)

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<p>1 Merck Schering-Plough targeted doctors 2 and other medical professionals with its 3 false and misleading marketing message? 4 A. That's correct. I do not 5 believe that Merck Schering-Plough 6 targeted doctors and other healthcare 7 professionals with false and misleading 8 information, at no time. 9 MR. GORDON: I have no 10 further questions, subject to Mr. 11 Almeida's follow-up. 12 MR. ALMEIDA: I'll ask a few 13 questions. 14 MR. GORDON: Do you want to 15 switch? 16 MR. ALMEIDA: I don't think 17 it's necessary. It might be 18 better for the video. Do you want 19 to just swap mics, I guess? 20 MR. GREENBAUM: Before we 21 begin, I have no questions at this 22 time. I'm reserving my right to 23 cross. 24 - - -</p>	<p>1 you thought these -- 2 A. Those gentlemen? 3 Q. Correct, I'm sorry, Mr. 4 Gordon. 5 He was asking you sentence 6 by sentence whether the statements in 7 this paragraph were true or false. And 8 he began with the first sentence of 9 that -- of that paragraph. 10 If I were to tell you to 11 assume that the first sentence in that 12 paragraph is not at all being attributed 13 to you or something that you said, could 14 you point out to me any other spots in 15 that paragraph that you disagree with? 16 A. I'd like to go through it 17 pretty much -- 18 Q. Sure, please. 19 A. I don't believe I would have 20 said false and misleading DTC marketing 21 campaign. In my heart -- 22 Q. What I'm -- what I'm trying 23 to say is that if you ignore that 24 sentence and believe -- because what was</p>
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<p>1 (Whereupon, a discussion off 2 the record occurred.) 3 - - - 4 MR. GORDON: Now Jeff has 5 every mic that exists in this 6 place, but I take it you can hear 7 me? It's fine. 8 MR. ALMEIDA: There should 9 be a mic over there. I left mine 10 over there. 11 - - - 12 EXAMINATION 13 - - - 14 BY MR. ALMEIDA: 15 Q. Thanks. Mr. Amaru, again, I 16 introduced myself to you before, my name 17 is Jeff Almeida from Grant and 18 Eisenhower, and I just have a few 19 questions for you. First I'd like you to 20 look again at Paragraph 311 of the 21 Complaint. 22 A. Okay. 23 Q. Now, the defendants were 24 asking you sentence by sentence whether</p>	<p>1 the intent here is that that sentence is 2 not attributed to you. 3 A. Okay. 4 Q. The parts that are 5 attributed to you are under that, that 6 begin with, According to Confidential 7 Witness 3. 8 Do you see that? 9 MR. GORDON: I will just 10 object. 11 MR. GREENBAUM: Objection. 12 Please let the witness finish his 13 answer. 14 MR. GORDON: I take it -- 15 MR. ALMEIDA: You guys 16 started objecting. I'm letting 17 him finish. 18 MR. GREENBAUM: You 19 interrupted his last answer. 20 THE WITNESS: Okay. All 21 right. So what I think I was 22 saying before, I don't think -- 23 that first sentence I did not say. 24 I would never say false and</p>

22 (Pages 82 to 85)

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<p>1 misleading marketing message. I 2 categorically deny that. 3 The next sentence, According 4 to Confidential Witness Number 3, 5 I was an executive specialty sales 6 rep. I did specialize in Merck's 7 cardiovascular drug franchise. I 8 did directly sell Vytorin for 9 several years before leaving Merck 10 in mid 2007. That's all correct. 11 Merck salespeople were 12 specifically trained with scripts 13 to pound home the lower is better 14 marketing message. That is true. 15 When providing details to doctors 16 on the benefits of Vytorin. That 17 is true. When -- CW 3 said that 18 when his/her doctors asked about 19 Vytorin efficacy, which is 20 often -- this is true -- he/she 21 would assume that the results of 22 ENHANCE would assure them that the 23 results of ENHANCE would be 24 available soon.</p>	<p>1 you had, took place in August of 2008, is 2 it possible that in August 2008 you made 3 that statement to the investigator you 4 were having the friendly conversation 5 with? 6 A. My -- my belief, it is not. 7 Because it's not -- I would say no. 8 Q. Okay. 9 A. No. 10 Q. The next question I have is, 11 you testified -- you answered some 12 questions today about how -- how you 13 believe that Merck was a very ethical 14 company and always followed regulations 15 and those sorts of things, right? 16 A. Yes. 17 Q. You also testified, however, 18 that you didn't have any role in the 19 ENHANCE trial itself, correct? 20 A. True. 21 Q. And you didn't have contact 22 with the scientists who were running the 23 ENHANCE trial? 24 A. Not with the scientists. To</p>
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<p>1 That wasn't our response. 2 Our response would be, here is our 3 efficacy. There was a marketing 4 piece that was based on 5 prescribing information. So I 6 would not have said that. 7 And assure them it was the 8 best cholesterol drug on the 9 market. That I would have said, 10 yes, because I did believe it was. 11 BY MR. ALMEIDA: 12 Q. Okay. So the part I had you 13 focus on, from -- beginning with 14 "according" to the last word in that 15 paragraph, "market," the one part in that 16 couple of sentences that you have a 17 problem with is the assurance that the 18 results of ENHANCE would be available, 19 quote/unquote, soon, right? 20 A. Right. I would not have to 21 bring up ENHANCE to talk about efficacy 22 It was not necessary. 23 Q. Okay. If I told you that 24 this interview, the first interview that</p>	<p>1 my knowledge, I had no idea who the 2 scientists were who were involved with 3 the ENHANCE trial. 4 Q. Do you have any knowledge, 5 personal knowledge, whether Merck or 6 Schering-Plough, the individuals 7 responsible for the ENHANCE clinical 8 trial, were acting ethically? 9 A. Please repeat the question. 10 MR. ALMEIDA: Sure. Can you 11 read it back, please? 12 - - - 13 (Whereupon, the court 14 reporter read the following part 15 of the record: 16 "Question: Do you have any 17 knowledge, personal knowledge, 18 whether Merck or Schering-Plough, 19 the individuals responsible for 20 the ENHANCE clinical trial, were 21 acting ethically?") 22 - - - 23 THE WITNESS: That they were 24 acting ethically? I would say,</p>

23 (Pages 86 to 89)